

## PLANNED DEVELOPMENT PERMIT

<b>FILE NO.</b>	<b>PD20-009</b>
<b>LOCATION OF PROPERTY</b>	<b>5353 Almaden Expressway</b>
<b>ZONING DISTRICT</b>	<b>A(PD) Planned Development (File No. PDC90-025)</b>
<b>GENERAL PLAN DESIGNATION</b>	<b>Regional Commercial and Oakridge Mall Urban Village Plan Area</b>
<b>PROPOSED USE</b>	<b>Planned Development Permit to allow the construction a new service/freight elevator and a new trash room for existing Building “A”, the conversion of the existing trash room to loading spaces, and site modifications including the removal of six parking spaces and modifications to landscaping within an existing retail center on an approximately 25-gross acre site.</b>
<b>ENVIRONMENTAL STATUS</b>	<b>Exempt pursuant to CEQA Guidelines Section 15301(e) for Existing Facilities.</b>
<b>OWNER/ADDRESS</b>	<b>Almaden Plaza Shopping Center Inc Brothers International Holdings, Inc. 5353 Almaden Expressway San Jose, CA 95118</b>
<b>APPLICANT/ADDRESS</b>	<b>Brereton Architects, Inc. 909 Montgomery St #260 San Francisco, CA 94133</b>

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as following for this proposed project:

1. **Project Description.** This Planned Development Permit allows the construction a new service/freight elevator and a new trash room for existing Building “A”, the conversion of the existing trash room to loading spaces, and site modifications including the removal of six parking spaces and modifications to landscaping within an existing retail center.
2. **Site Description and Surrounding Uses.** The subject site is located along Almaden Expressway between Highway 85 and Blossom Hill Road, at 5353 Almaden Expressway. The subject site at Building “A” is a portion of a total acreage of approximately 25.0-gross acre parcel. The entire site is developed with commercial uses, including retail, restaurants, and personal service, with surface parking. The subject site is surrounded by commercial development to the north across from Highway 85, including Best Buy and

Walmart, and to the south across from Blossom Hill Road, including Whole Foods and Office Max. There is a combination of multifamily residential and smaller commercial development to the east across Almaden Expressway, including a 76 Gas Station, and to the west across Russo Drive, including a Wingstop and a Credit Union.

3. **General Plan Consistency.** The subject site has an Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Regional Commercial and is within the Oakridge Mall Urban Village Plan area, which is a Horizon 2 Urban Village Plan. The Regional Commercial land use designation supports a very wide range of commercial uses, which may develop at a wide range of densities. Large shopping malls, and large or specialty commercial centers that draw customers from the greater regional area are appropriate in this designation. The existing commercial regional mall use conforms to this general plan designation.
4. **Planned Development Conformance.** The subject site is located in the A(PD) Planned Development Zoning District established with File No. PDC95-013. The Planned Development Permit enumerates permitted uses associated with the regional mall to include all uses allowed under the C-3 Zone, which was renamed to the CG Commercial General Zone in 2014. The proposal includes site modifications and the elimination of six parking spaces, which requires a Planned Development Permit application.
  - a. **Use.** File No. PDC95-013 permitted uses include all uses allowed by the CG Zone. The new trash room, freight elevator, and loading spaces do not constitute a change of use. Therefore, the proposed project is consistent with the existing use.
  - b. **Setbacks and Height.** Properties located in the CG Zoning District are subject to setback and height requirements per Section 20.40.200 of the Zoning Code. However, this project is not proposing to modify the height or the setbacks of the existing building. Therefore, the project is deemed consistent with these requirements.
  - c. **Parking.** Parking requirements as stated in File No. PDC93-013 are per the CG Zone. However, the Development Standards state that modified requirements may be approved with a PD Permit subject to a parking analysis. A parking analysis was received, and upon review of the Parking Analysis provided, 2,415 spaces are required, and 2,286 spaces are provided. Since this site is within an Urban Village Plan area, it is subject to a 20% reduction in required parking spaces, as long as the project meets the total number of bicycle parking spaces required. This would reduce the parking requirement to 1,932 spaces ( $2,415 * 80\%$ ). Therefore, the parking is consistent with the requirements.
  - d. **Bicycle Parking.** Bicycle parking is being added to the site consistent with the requirements where there was none existing. Per Section 20.90.060 of the Zoning Code, two bicycle spaces are required for office use and 39 spaces are required for retail use, for a total of 41 spaces required. The project includes 43 parking spaces, which is consistent with the requirements.
  - e. **Off-Street Loading.** Per Section 20.90.410, the loading space requirements are one space per 10,000 square feet, plus one additional loading space for each 20,000 square feet of floor area. Based on the building square footage, seven loading spaces are required. This permit establishes that within Building "A," there are three existing loading spaces, and two of the existing spaces are being modified from a trash room to loading space use.

5. **Environmental Review.** Class 1 of Section 15301(e) (Existing Facilities) consists of consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alterations of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use, including additions to existing structures that do not result in an increase of more than 10,000 square feet of floor area.

The proposed project involves a new service/freight elevator and a relocated trash room within an existing retail center and does not include the addition of any new square footage. Therefore, the project will not result in an increase of more than 10,000 square feet of floor area and is, thereby, exempt. The project conforms in all respects to the provisions of Title 20 of the San José Municipal Code, including the development standards of the A(PD) Zoning District. The noise is limited to the construction period of the project and during the posted construction hours. The project will not cause any negative effect due to storm water runoff, drainage and erosion controls per the Final Memo issued by the Department of Public Works dated 10/30/20.

6. **Design Guidelines Consistency.** The project is subject to the Commercial Design Guidelines. These guidelines cover minimum project standards for achieving a high level of design quality. For consistency with these Design Guidelines, the project is providing one additional tree in a new landscape bulb in the affected surface parking per the requirements on page 19 of the Design Guidelines. The project is therefore consistent with this requirement. All other requirements are being met.
7. **Planned Development Findings.** This Planned Development Permit does not negate any findings required by Section 20.100.940, of the Zoning Ordinance. Chapter 20.100.950 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Planned Development Permit.

The Director of Planning, Building and Code Enforcement concludes and finds, based on the analysis of the above facts, with respect to the Planned Development Permit findings that:

- a. The Planned Development Permit, as issued, is consistent with and furthers the policies of the General Plan; and

*Analysis: As described above, the project is consistent with and will further the policies of the General Plan.*

- b. The Planned Development Permit, as issued, conforms in all respects to the Planned Development Zoning of the property; and

*Analysis: As discussed above, the project conforms to the building setbacks, height, and to the approved Planned Development Zoning, File No. PDC95-013. The project proposes site modifications and the removal six parking spaces, which is consistent with the parking standards. The project includes new proposed bicycle parking spaces and establishes the three existing loading spaces. The project is therefore consistent with the requirements of the Planned Development Zoning.*

- c. The Planned Development Permit, as approved, is consistent with applicable City Council Policies, or counterbalancing considerations justify the inconsistency; and

*Analysis: The project has been noticed for public hearing to a radius of 500 feet, consistent with the Public Outreach City Council Policy. There are no other specific City Council policies for the proposed modifications on site.*

- d. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious; and

*Analysis: The project includes minor site improvements to the surface parking lot on the west side of Building "A" including relocating two ADA parking spaces, removing six parking spaces, and adding one tree to a new landscape bulb. The project is retaining the existing 35-foot wide access driveway. New trash doors are proposed to be added to the exterior of the building for access into the new trash room. No other significant physical changes are proposed to the exterior of the existing primary buildings or structures as part of this permit. The site will continue to be accessed from driveways off Almaden Expressway and Blossom Hill Road.*

- e. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.

*Analysis: The project will not cause any negative effect due to storm water runoff, drainage and erosion controls per the Final Memo issued by the Department of Public Works dated 10/30/20. The vibration and noise associated with construction will be temporary in nature, which will last only during the duration of the installation of the new elevator and trash room. The construction hours will be limited to 7:00 a.m. to 7:00 p.m., Monday to Friday. There are no hazardous substances or odors associated with the project. The project will not have an unacceptable negative effect on adjacent properties.*

In accordance with the findings set forth above, a Planned Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

#### **APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.



2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Use Authority.** This Planned Development Permit authorizes the installation of a freight elevator and trash room on the existing regional mall site, including the conversion of the existing trash room into loading spaces and site improvements to the existing surface parking lot.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
5. **Sewage Treatment Demand.** Pursuant to Chapter 15.12 of Title 15 of the San José Municipal Code, acceptance of this Permit by Permittee shall constitute acknowledgement of receipt of notice by Permittee that:
  - a. No vested right to a Building Permit shall accrue as the result of the granting of this Permit when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region;
  - b. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority;
  - c. Issuance of a Building Permit to implement this Permit may be suspended, conditioned or denied where the City Manager makes a determination that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San José or to meet the discharge standards of the sanitary sewer system imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region.
6. **Conformance to Plans.** The development of the site shall conform to the approved Planned Development Permit plans entitled "5353 Almaden - Trash Chute & Freight Elevator," dated January 8, 2021, on file with the Department of Planning, Building, and Code Enforcement, and to the San Jose Building Code (San Jose Municipal Code, Title 24), with the exception of any subsequently approved changes.

7. **Conformance with Previously Approved Zoning and Permits.** The project will continue to conform to the General Development Plan, Zoning, File No. PDC95-013.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
9. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
10. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Chapter 20.100 of the San Jose Municipal Code.
11. **Demolition Permit.** A demolition permit may be issued for the removal of interior walls and mechanical equipment only upon the issuance of a Building Permit for new construction.
12. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
13. **Lighting.** No lighting plan is approved with this permit. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property.
14. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City of San José.
15. **Refuse.** All trash and refuse storage areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the trash or refuse container(s). Trash areas shall be maintained in a manner to discourage illegal dumping.
16. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the Approved Plan Set.
17. **Anti-Graffiti.** All graffiti shall be removed from buildings and wall surfaces, including job sites for projects under construction, within 48 hours of defacement.
18. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly-used areas free of litter, trash, cigarette butts, and garbage.
19. **Building and Property Maintenance.** The property shall be maintained in good visual and functional condition. This shall include, but not be limited to, all exterior elements of the buildings such as paint, roof, paving, signs, lighting, and landscaping.
20. **Required Vehicular, Motorcycle, and Bicycle Parking.** This project shall conform to the vehicular, motorcycle, and bicycle parking requirements of the Zoning Ordinance/ approved Planned Development Zoning, as amended. Any changes to the required vehicular, motorcycle, or bicycle parking requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.

21. **Mechanical Equipment.** The location and type of mechanical equipment shall be as shown on the Approved Plans and shall be screened from view. Changes to the mechanical equipment requires the issuance of a Permit Adjustment or Amendment to the satisfaction of the Director of Planning.
22. **No Generators Approved.** This Permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
23. **No Extended Construction Hours.** This Permit does not allow any construction activity on a site located within 500 feet of a residential unit before 7:00 a.m. or after 7:00 p.m., Monday through Friday, or at any time on weekends.
24. **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation shown to be retained in this project and as noted on the Approved Plan Set. Maintenance shall include pruning and watering as necessary and protection from construction damage. All trees to be preserved shall be permanently identified by metal numbered tags. Prior to issuance of the Grading Permit or removal of any tree, all trees to be saved shall be protected by chain link fencing, or other fencing type approved by the Director of Planning. Said fencing shall be installed at the dripline of the tree in all cases and shall remain during construction. No storage of construction materials, landscape materials, vehicles or construction activities shall occur within the fenced tree protection area. Any root pruning required for construction purposes shall receive prior review and approval, and shall be supervised by the consulting licensed arborist. Fencing and signage shall be maintained by the applicant to prevent disturbances during the full length of the construction period that could potentially disrupt the habitat or trees.
25. **Landscaping.** Planting and irrigation are to be provided by the Permittee, as indicated, on the final Approved Plans.
26. **Irrigation Standards.** Irrigation shall be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping, the City of San José Landscape and Irrigation Guidelines and the Zonal Irrigation Plan in the Approved Plans. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
27. **Certification.** Pursuant to San José Municipal Code, Section 15.11.1050 certificates of substantial completion for landscape and irrigation installation shall be completed by a licensed or certified professional and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
28. **Replacement Landscaping.** Any landscaping damaged or removed with the construction of the project shall be replaced with similar landscaping in the immediate area. All landscaped replacement areas shall be automatically irrigated.
29. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit for a new building (excluding façade improvements to the existing buildings), the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, **PD20-009**, shall be printed on all construction plans submitted to the Building Division.

- b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any Building Permit issuance, Building Permit plans shall conform to the approved Planning development permits and applicable conditions.
30. **Fire Department Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the project must comply with the 2016 California Fire Code, or as approved and adopted by the City of San Jose.
31. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the issuance of Building permits, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following <http://www.sanjoseca.gov/devresources>.
- a. Grading/Geology:
    - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
    - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the latest California Plumbing Code as adopted under the City of San Jose Municipal Code Section 24.04.100 or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.
    - iii. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction may be required to be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The report should also include, but not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
  - b. Stormwater Peak Flow Control Measures: The project is located in a Hydromodification Management (HM) area but will not create and/or replace one acre or more of impervious surface. This project is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).



- c. Flood Zone D: The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
32. **Revocation, Suspension, Modification.** This Planned Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

**APPROVED** on this 10<sup>th</sup> day of February 2021.

Rosalynn Hughey, Director  
Planning, Building, and Code Enforcement

Deputy